STATUTUL LEGAL AL ÎNTREPRINDERILOR PUBLICE ŞI MONOPOLURILOR COMERCIALE

LEGAL STATUS OF PUBLIC ENTERPRISES AND COMMERCIAL MONOPOLIES

Ovidiu Horia MAICAN
Lecturer Ph.D., Faculty of Accounting and Management Information Systems, Law Department, Bucharest Academy of Economic Studies
E-mail: ovidiuszm@yahoo.com

Abstract
The public sector, represented mainly by public enterprises, is important because it provides the link between the private and public interests.
The state support for public enterprises and trade monopolies may create discrimination between them and private companies.
Because of the importance of this issue, it has been regulated at Community level.

***Keywords*:** public enterprises, commercial monopolies, transparency, financial relations

JEL CODES: K 2

Rezumat
Sectorul public, reprezentat mai ales de întreprinderile publice, prezintă importanţă deoarece asigură legătura dintre interesele private şi cele publice.
În acelaşi timp, susţinerea de către stat a întreprinderilor publice şi a monopolurilor comerciale poate crea discriminări între acestea şi întreprinderile private.
Datorită importanţei acestei probleme, ea a fost reglementată la nivel comunitar.

Cuvinte întreprinderi publice, monopoluri comerciale, transparenţă, relaţii financiare

Proceedings of the seventh Administration and Public Management International Conference

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

1. INTRODUCTION

In general, community law is irrelevant to the operation of nationalization of enterprises, because the Treaty of Rome "does not affect anything system of property ownership in Member States" (Article 222 EEC and 83 ECSC). Each state is thus free to have a public and decide to extend it. These are fundamental freedoms guaranteed by the Treaty of Rome. Commission adopted a position of strict neutrality on the French nationalization in 1982, for banks controlled by the authorities of other Member States can carry out work in France or may decide to engage in such activity here. Nationalization has therefore the effect obstructing the free exercise right or liberty of provision of services. (Druesne, 1991, p 194)

After all, the powers of public enterprises, which are numerous and important, are not an obstacle to competition policy directives of the Community, although their particular mode of operation or management not cause harm to competition under the Common Market. Rules imposed by the Treaty are applicable, as happens when private companies and the Commission strives to be respected, especially when it comes to transparency of financial relations between the state and public enterprises.

2. PUBLIC ENTERPRISE

2.1. The concept of public enterprise

There is no communitary definition of public enterprises, but it is generally accepted that the defining element is subordinate to the public authorities. Situation of dependency in which the company is located across from the authority comes from all or most of the capital they hold authorities. In 1980, the Commission noted precisely this criterion, qualifying as public any undertaking over which the "public authorities may exercise directly or indirectly a dominant influence on the property, the financial participation or the rules they impose.Decisive characteristic is given by government rule and the possibility that they were not to take an account of the requirements of profitability leading industrial and commercial strategy of private enterprises in order to impose the contrary, public companies to meet their guidance purposes their own policies.

Public enterprises are the main component of the public sector, with mixed-enterprises (based on state ownership and private) and controlled in a more or less by public authorities.

The states give some protection through monopoly public enterprises.

Exclusive monopoly rights are granted for various reasons of public interest (security of supply, providing a service essential to the public, etc.). Such practices are common, especially in public enterprises (energy and water), postal services, broadcasting, telecommunications, air and sea transport, banking and insurance.

These exclusive rights can impede the creation of a genuine internal market in these sectors. (Moussis, 2001, p 259)

Court of Justice, in Case Corbeau, Belgian Post characterized as "service of general economic interest", arguing that it has "an obligation to ensure the collection, transport and distribution of mail, the benefit of all users throughout the Member State concerned , uniform prices and similar quality conditions, without taking into account the particular situation or the degree of economic profitability of each individual operation. (Favret, 2001, p 145)

In a preliminary ruling of the Court of May 17, 1994 (Case Corsica Ferries Italia SRL v. Corpo di Pilots Porto di Genova) shows that the protection afforded through legislative measures of a Member State for a limited number of enterprises, can result in substantial impairment allowable capacity to other firms that economic activity in the same geographical areas, according to conditions largely equivalent. (Manolache, 2003, p 361)

Court of Justice (through the decision of April 23, 1991, in Case 41/90) indicated that the German Federal Office of Labour was not able to meet market demand (on placing senior) and hence , to meet the monopoly granted. Despite this situation, the monopoly was maintained, the Office of Labour abusing his position. As a result, the behavior of the state was declared incompatible with art. 86 (ex 90), par. 1 CE. In this situation conclude only need to eliminate the monopoly of placing senior executives. (Manolache, 2003, p 361)

2.2 Obligations of States to public enterprises

Article 86 (ex 90) EC prohibits Member States to take action on public business be contrary to competition rules. (Manolache, 2003, p 361)

This is to prevent public authorities to make use of dependency that are public companies, in order to remove the prohibited conduct in all enterprises, whether public or private. The state may thus require them to participate in the arrangements of Article 81 (ex 85) EC or abusing a dominant position which would have an under Article 82 (ex 86) EC nor to grant aid fall within Article 88 (ex 92) EC. Must, therefore, that both private companies and the public be given the same treatment, despite the great financial ties that bind the State government.

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

Commission has been, for example, to intervene on the activities of international flights transporting small packages, business papers or emergency supplies (medicines, tapes, etc), in special conditions of security and speed. Such activities, being considered in several Member States as part of the postal monopoly, private carriers were limited services as postal administrations were operating their express delivery service.

Following directions given by the Commission, the governments of Germany, Belgium and France agreed in 1985 (and later, in 1989 and Italian), competition between postal services and private flights. Same with Germany, in 1986, and Italy, in 1987, when they suppressed exclusive rights to import and marketing of modems. (Druesne, 1991, p 202)

The example of Renault is also significant in terms of state aid. The Commission accepted in March 1988 the French government aid to 20 billion francs, ie 12 billion of debt relief as the public company, provided a change of status , making directed national organization, like the other. (Druesne, Kremlis 1990, p 96)

In general, the state must refrain from any maneuver that would lead a public undertaking to apply discriminatory measures on the products of other Member States.

EEC Treaty does not contain any provisions with reference to public markets, but the Commission has always considered as measures having equivalent effect to a quantitative restriction of the importance of national suppliers reserve public markets. Council even gave a directive on December 21, 1976, betting exchange coordination procedures furniture markets, whose purpose is to impose equal conditions of participation in these markets in all Member States, and another directive of March 22, 1988 tends to improve transparency. Implementation of competition law (the announcement of a tender in the Official Journal of the European Communities), however, is not binding only for markets whose ceiling is at least 200 000 Euro. In particular, the Directive on telecommunications, transportation or supply water or energy, involving numerous public companies, is excluded from the field of application of Council decisions from June 22, 1988. (Druesne, Kremlis 1990, p 97)

2.3 Cases of certain public enterprises

Article 86 (ex 90) EC recognizes that state enterprises can entrust certain private economic mission, which would be canceled if they would be fully subject to competition rules. Therefore, be allowed to circumvent, but only if they fail their task.

Companies that would benefit from a regime of exception are those responsible for management services of general economic interest-giving nature a monopoly and tax. (Druesne, Kremlis 1990, p 98)

2.4 Transparency of financial relations between state and public enterprises

In order to enforce a power given by the Article 86 (ex 90) EC, the Commission adopted on June 25, 1980 a directive (80/723, OJ L 195 from 29 july 1980, amended last time by directive 2006/111 from 16 november 2006, OJ L 318 from 17 november 2006) which requires Member States to communicate, to request information about the nature and effect of their financial relations with public enterprises. This is to ensure transparency of these relations, to allow the Commission to distinguish among the public resources made available to a public company, those who constitute aid under Article 88 (ex 92) EC, the normal market economy.

Directive concerns the provision of public resources made by public entities, through public companies or financial institutions, and effective use of these resources. (Druesne, Kremlis 1990, p 99)

Public entities means the state and other teritorial entities (colectivities).

The public enterprise is understood any undertaking over which public authorities may exercise directly or indirectly a dominant influence of that ownership, financial participation or the rules that drive.

Public enterprise manufacturing sector is any enterprise whose main activity, representing at least 50% of total annual turnover, is conducted in the manufacturing sector. The influence of public powers on business is considered dominant if the public authorities hold the majority of subscribed capital of the company, the majority of media attached units issued by the enterprise or can appoint more than half the members of the management body, the direction or supervision of the company.

Financial relations between public authorities and public undertakings whose transparency is ensured that the directive refers to: (Druesne, Kremlis 1990, p 100)

1. compensating parties operating;
2. capital gains or facilities;
3. contributions to lost or borrowed funds on privileged terms;
4. concession in the form of non-financial benefits of collecting benefits or non - collection of receivables;
5. waiving the normal remuneration of public resources committed;
6. compensation duties imposed by government.

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

Directive does not apply to financial relations between public authorities and:

1. public undertakings in respect of the benefits of services which are not obviously likely to affect trade between Member States;
2. central banks and the European Monetary Institute;
3. public credit establishments in the storage of public funds by public authorities, in normal market conditions;
4. public undertakings whose turnover outside the duty not reached a total of 40 million euros during the two annual exercises before that were made available or have used the resources covered by the first article. However, for the establishment of public credit, this threshold is 800 million euros of the total balance.

Member States shall take measures to ensure that data on financial relations remain concerned by the first article is kept by the Commission during the five years since the last financial year in which public resources were made available to the public enterprises concerned.

However, if public resources are used over a year later, the period of five years beginning with an end of the same year.

Upon request, and if it thinks necessary, Member States shall communicate the data set, and the factors necessary and especially objectives.

States whose public undertakings operating in the manufacturing sector communicate financial information to the Commission, on an annual basis and within a specified period.

Financial information provided for each public undertaking operating in the manufacturing system is the annual report and accounts, as defined in Council Directive 78/660/EEC (amended last time by Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009, OJ L 164 from 26 june 2009). The annual accounts and annual report includes balance sheet and profit and loss, Annex, and description of accounting principles, the declaration of the Management Board, the information sector and the activities report.

To the extent that they are not included in the annual report or annual accounts, the following information must be provided to each company:

1. capital gains or quasi-equity share capital assimilated;
2. non-refundable grants or refundable only under certain conditions;

3. concession loan company, is necessary to specify the interest charges, loan conditions and safety measures provided to those who borrow from that undertaking;
4. guarantees the business by public authorities for loans, and any premiums paid by the enterprise for such guarantees;
5. dividends paid and undistributed profits;
6. any other form of state intervention, especially the waiver rule to amounts owed to him by a public undertaking, or repayment of loans or grants, tax regulation on society, social charges and similar debt.

Targeted information is provided to all public companies have made over the most recent year, a turnover exceeding 250 million Euros.

The information required is provided separately for each public enterprise, ie those established in other Member States, and shall contain information on transactions conducted within the same group and between different groups of public enterprises, as those carried out directly between the state public enterprises. Capital shares and capital that includes a public undertaking specific actions provided directly by the state and from the public's holding of other public enterprises belonging to the same group or notThe relationship between the lessor and beneficiary funds must always be specified. Some public companies share the work between several different businesses legally. For these companies, the Commission accepts a consolidated report. This building should reflect the economic reality of a business group that operates in the same sector or related sectors. Easily consolidated financial reports of individual holdings is not sufficient information provided to the Commission on an annual basis.

The Commission must not disclose information which it has knowledge which, by their nature are professional secret. This does not preclude publication of general information or surveys which do not include individual guidance on public companies covered by this Directive. Shall inform the Member States regularly about the results of the directive.

Targeted financial relations cover both the active transfer of public funds to business (capital contribution or donations, or loans on privileged terms taken in charge by the parties) and passive transfer (not paying the benefits, does not cover claims or waiving the normal remuneration of public resources employers and compensation duties imposed by the public power company).

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

Obligation arising from this for states is to specify in the accounts of public enterprises, the ceiling and the intended use of public resources and providing them to the Commission, if it complains, during the five years following.

Commission adopted on May 16, 1988, a directive to free competition on the Community market for telecommunications terminal equipment (modems, telex machines, telephone boxes), and on June 22, 1989, a directive for the liberalization of telecommunications services. (Druesne, Kremlis 1990, p 100)

Two decisions were made to Member States on April 24, 1985, namely Greece (decision relating to a law that promote public sector insurance companies), and on June 22, 1987, Spain, for measures to reductions of reserve air and sea residents of the Canary and Balearic islands, excluding them from the benefit of Member States on the other residents living in these islands. (Druesne, Kremlis 1990, p 100)

3. COMMERCIAL (TRADE) MONOPOLIES

Article 31 (ex 37) EC on the "monopolies of which are commercial" appears in chapter devoted to elimination of quantitative restrictions between Member States, that a provision dealing with free movement of goods, and not in the chapter "competition rules". The authors of Treaty found that suppression of the Treaty, in intra-Community customs duties and taxes equivalent to equivalent restrictions would be sufficient to guarantee the free movement of goods on a national commercial monopoly. Famous Spaak Report, established after the Messina conference of April 21, 1956, noted that when the volume of imports resulting from the institutionalization of a monopoly buyer, given to a public or a private groups, "the resulting confusion with the very limited imports buyer . So you can not automatically apply a formula to extend the quotas, it is not recommended to buy certain products that are not necessarily required. It was envisaged simply end these monopolies, which often responded establishing purely political concerns. Thus Article 37 is part of a progressive organization requires Member States during the transitional period requirement has been met with delay and whose degree of achievement is still imperfect. (Druesne, Kremlis 1990, p 101)

3.1. The notion of comercial monopoly

Court of Justice gave a general definition (decision of July 15, 1964, because Costa ENEL) in connection with nationalization in Italy the production and distribution of electricity. It considered that such monopolies "should on the one hand, must be intended transaction on a commercial product may be subject to competition and trade between Member States and, on the other hand, can play an effective role in the exchanges. (Druesne, Kremlis 1990, p 103)

It will automatically exclude the application of Article 37 service activities, even if they are in the form of monopoly. For delivery of private teledistribution system that exists in Italy, the Court noted that the issue of televised messages (with advertising) is a provision of services not covered by the provisions of commercial monopoly, because it does not cover trade in goods (decision of April 30, 1974, case Sacchi). It should also be limited effects on intra-Community trade monopoly.

The objective of Article 31 (ex 37) EC is to ensure free movement of goods within the Common Market, not valid for imports of goods from third countries (decision of March 13, 1979, case Hansen).

Article 31 (ex 37) EC provides that its provisions "shall apply to any body through which a Member State, legally or *de facto* control, handles or influence, directly or indirectly, imports or exports between Member States There may be an administration of a State, of a public undertaking, on a national society or the private companies.

In other words, it seeks to eliminate discrimination, particularly those consisting of exclusive rights.

3.1.1 The exclusive right to import

Concerned with maintaining normal competitive conditions between Member States and equality of opportunity for products imported from other Member States, the law goes far enough considering the interpretation of the concept of discrimination, to the Italian tobacco monopoly, the exclusive right to import constitute discrimination , shown to exporters Community (Case of February 3, 1976, case Manghera).

So if the commercial monopolies can survive, the organization must not necessarily lead to the abolition of exclusive import rights of the State, but still the monopoly of one withdraws its essential components. (Druesne, Kremlis 1990, p 104)

3.1.2 The exclusive right to export

The same analysis can be applied in this case, although the Commission has not acted on that point. Since the free movement of goods concerns, after the period of transition, the products in monopoly, there is no reason to distinguish barriers affecting imports or exports. The exclusive right to export is comparable to a quantitative restriction on the export (Article 34). (Druesne, Kremlis 1990, p 104)

3.1.3 The exclusive right to trade

The problem is more delicate in this case, the case of products imported from other Member States to be marketed domestically. It is considered that raising import duties and that it automatically entails

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

marketing Order to organize the monopoly power of state regulators allow very significant in terms of marketing, provided that not violate the rules of competition between economic operators in the retail price. (Druesne, Kremlis 1990, p 107)

3.1.4 The exclusive right to manufacture

Article 31 (ex 37) EC states that a monopoly can retain the exclusive right to manufacture a product in terms of Article 222 of the Treaty. It is covers the exclusive right to market its own production state.

Obligation organization translates to monopolies in trade between Member States by the loss of exclusive rights to import and export and trading law by the disappearance of imported products. Instead, it is allowed to maintain the monopoly of production and marketing of domestic products. (Druesne, Kremlis 1990, p 108)

Prohibition of discrimination applies not only to import and export operations themselves, but also other related to the existence of monopoly practices affecting trade between Member States. The taxation of imported products in terms different from those in the case of taxation of products national covered by Article 31 (ex 37) EC, and marketing a national product at a price far too low compared to that of a similar product imported from another Member State. However, nothing prohibits the Member State to another Member State impose unique product imported to compensate for the difference between the sales price of the product in their country and pay much higher prices because of monopoly, domestic manufacturers of the same product (Case of 17 February 1976, case Miritz), and, conversely, to impose national products against similar imported products (decision of March 13, 1979, case Peureux).

3.1.5 Special cases

3.1.5.1 Monopolies on agricultural products

Paragraph 4 of Article 31 (ex 37) EC provides that if a commercial monopoly aims valuation of agricultural products, the organization must be operated so as to provide "equivalent guarantees for jobs and living standards of the producers concerned , given the pace with possible and the specialization required. It refers mainly to the monopoly created by the alcohol industry in France and Germany and the monopoly of the tobacco industry in France and Italy. (Druesne, Kremlis 1990, p 108)

3.1.5.2 Monopolies resulting from international agreements

This is an exception, because in terms of Article 31 (ex 37) EC obligations of Member States have no value unless they are compatible with existing international agreements. Germany has ended an

agreement with the Dutch group Kreuger, who granted a loan of 125 million dollars in exchange for which the Germans undertook to establish a monopoly of the production sector matches. The loan was considered by the London Convention of 1953, as a duty of the Federal Republic of Germany, so that upon entry into force of the EEC Treaty, the provisions of paragraph 5 allowed considering Germany as a country free of duty monopoly organization, as the holder exclusive rights to import, export and marketing. Last installment of the loan was set on January 15, 1983, after a law passed in August 1982 to stop a monopoly in the production of matches, thereby eliminating the last exclusive right to import and export from the Community.

3.2 THE LEGAL STATUS OF EXISTING MONOPOLIES

Upon entry into force of the Treaty of Rome, there were 18 national monopolies in the Community covered by Article 31 (ex 37) EC, 8 in Italy, 8 in France and 2 in West Germany. Despite the obligation to go to the organization by the end of the transitional period, only one country did it in December 31, 1969, other then statements prohibiting knowing or partial organization. The first extension, any commercial monopoly was not declared in the UK or Ireland. Only Denmark has created a monopoly in the production of alcoholic beverages, he nevertheless concluded in December 1972. Many monopolies exist in Greece, especially for oil, and two in Spain (oil, tobacco) and Portugal (oil, alcohol). (Druesne, Kremlis 1990, p 110)

The Commission report on competition in 1996 indicated that "liberalization of the traditional monopoly sectors is a key step in establishing a genuine single market. However, the Commission is aware that the particular mode of organization of these sectors reflected the often legitimate concern for social cohesion ". (Mathijsen, 2002, p 325)

The Commission argued (in the notification on services of general interest in Europe) pragmatic and gradual approach, taking into account the features. This means that it is intended to achieve consensus with other EU institutions, Member States and other stakeholders. (Mathijsen, 2002, p 325)

Despite the Commission's intention to use all legal tools available, it will achieve that goal because of a compatibility between the objectives of liberalization and public service.

New monopolies appeared then in the Community with the accession of Spain, Portugal and Greece. Later, joining Austria, Finland and Sweden have created problems because of stringent rules on the sale of alcoholic beverages. (Mathijsen, 2002, p 325)

The Swedish liquor monopoly was not considered hostile to EU rules, although it was considered only discriminatory but also an obstacle to free movement of goods. In the same vein, Swedish and Finnish

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

monopoly of retail sales have been regarded as hostile to EU rules, because there is no discrimination between the domestic and imported goods. (Mathijsen, 2002, p 325)

Despite the fact that most monopolies were abolished or adjusted, the Commission only in 1993 could report the adequacy of measures taken by governments.

However, careful examination of specific sectors (energy), it appears that in most countries are available for controlling the import and export monopolies.

At the moment we can say that (besides some exceptions) trade monopolies in the EU area have adapted the rules of the Treaty of Rome. However, the Commission has already identified some inappropriate public service monopolies (energy, postal, telecommunications, transport).

3.2.1 France

3.2.1.1 Monopoly in tobacco industry

The monopoly created in 1810 by an imperial decree has received a direct management from 1890, before being entrusted to a public administrative organizations in 1936 (Autonomous House for Amortization) and in 1959 an industrial and commercial organizations (Service for industrial exploitation of tobacco and matches-SEITA), transformed in 1980 into a national company. The subject of organization under Article 37 of the Treaty by the Law of May 24, 1976 is to halt the exclusive rights previously held the monopoly for the import and wholesale trading of tobacco from other Member States and allow these operations to any individual or legal person established in France as a supplier (the obligation to establish in France was abolished by a decree of April 3, 1980). Termination of exclusive rights was extended to the tobacco originating in third countries from other Member States after they have been implemented in one of them (law of December 29, 1978).

3.2.1.2. Monopoly in petroleum products industry

Established in 1928, is now fully organized under Article 31 (ex 37) EC, its main mode of existence is to maintain a certain security in the supply of crude oil and refined products. Monopoly set in terms of the French market of products, as they should be under state control, through private companies that have distribution authorization from the Government. The beneficiaries of these permits, renewed 3 years, allowing the importation and sale within an annual quota. (Druesne, Kremlis 1990, p 113)

The organization of this monopoly has been operated, the unusual form of "opinions" published in the Official Journal of June 29, 1979 French. Powers of authorization to do from now on objective criteria

(the legal form of businesses, storage facilities, etc..) And rates are suppressed. Consent holders must submit and comply with their party plans that provide coverage through contracts to supply the majority of the medium, which will be completed irrespective of French refineries or refineries in other Member States. Monopoly no longer present, so exclusive rights to import and marketing.

3.2.1.3. Monopoly in the alcohol industry

Created in the interest of national defense since the war, production of industrial alcohol used in the manufacture of explosives increased, this monopoly has two key features. On the one hand, alcohol produced in France is reserved to the State, represented the service of alcohol, except for certain categories which are not monopoly ("free spirits", as opposed to "alcohol Reserved"). Alcohols reserved by the State are taken, within a given quantity, and resold or returned to users at prices fixed by ministerial decision. Producers can still get their free use of alcohol by a lump ("spirits issued"). An importer must pay a surcharge to compensate for protecting domestic production of foreign competition. Importation of alcohol from another Member State allow the payment of countervailing duties if the minimum sale price of alcohol in the home's selling price is lower than in France, so the fee is the difference between the two prices. (Druesne, Kremlis 1990, p 113)

This arrangement led the Commission, several times, the introduction of the infringement procedure against France

A decree of July 25, 1977 granted the first producers of alcohol from other Member States to dispose freely of their production and suppression of countervailing duties applicable to Community importers. Thus, the exclusive right of the importance of alcohol service was eliminated, and operators has been recognized right to freely import alcohol from other Member States.

May was also decided that alcohol can be exported at a price that does not take account of variable costs is therefore lower than the actual cost of goods. French distillers are so happy public funds to sell their production on the Community market at prices abnormally low compared with that of similar quality alcohol sold in other Member States. Germany, United Kingdom and the Netherlands have been complaints that these exports do not meet competition and the French government changed, by decision of July 18, 1983, the method for setting the purchase price, taking into account the Commission's proposals. On September 4, 1984, the Commission has set a countervailing duty on alcohol French exports to other Member States.

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

3.2.1.4. Monopoly in the potassium

It was created in 1937 and is controlled by companies of potassium and nitrogen, was organized by a decree of March 23, 1973 which abolished the exclusive import of potassium fertilizers originating from other Member States.

3.2.1.5. Monopoly in the production of matches

It was created in 1972 and operated by SEITA, then organized by the Law of December 4, 1972 which abolished the exclusive rights to import and marketing of matches from other Member States.

3.2.1.6. Monopoly in the sector of gunpowder and explosives

It was created under the Old Regime and the Revolution once confirmed, is controlled by the service responsible for the control of gunpowder. It was organized by Act of July 3, 1970 and control was acquired by the National Society of gunpowder and explosives who holds exclusive rights to manufacture, import, export and marketing of military purposes, but carry out these operations with private companies for products with civilian purpose.

3.3 Italy

3.3.1 The monopoly of the tobacco industry

It is being held by a company named Azienda autonoma dei Monopoli di Stato, by a law of December 10, 1975 which suppresses exclusive rights to import and wholesale trading. A law of May 13, 1983 allows the retailer access to the profession from other Member States, dot the state's capacity to establish direct debits controlled Tobacco Services (Rivendita di Stato) and establishes a non-discriminatory tax regime tobacco imported from other Member States. Finally, a decree of July 26, 1983 specifies the conditions for import and wholesale trading, giving the other competitors the opportunity to create their own network of wholesale and distribute their own products. (Druesne, Kremlis 1990, p 117)

3.3.2 Monopoly in the production of matches

It was organized by a decree of June 25, 1973, which suppresses the exclusive rights to import and wholesale trading, then the Law of May 13, 1983 which extended the provisions imposed on tobacco and matches.

3.4 West Germany

Monopoly in the alcohol industry was organized by a law of May 2, 1976 and the industry matches stopped after the law of January 16, 1983. A project aimed to provide public company Bundespost exclusive right to provide wireless telephones was abandoned in March 1985, after intervention by the Commission, as being suppressed and exclusive rights to import and marketing of modems, in 1986. (Druesne, Kremlis 1990, p 118)

3.5 Belgium

In this country there was a commercial monopoly until the Treaty enters into force, but a law of August 8, 1980 has granted an exclusive right to company Distrigaz to import natural gas in Belgium. However, the government has complied with Article 37, promulgând a law July 29, 1983, to suppress this right and limiting gas underground storage and transport provided these companies. (Druesne, Kremlis 1990, p 119)

3.6Greece

In the article 40 of the Act of Accession requires the suppression of Greece, from January 1, 1981, all exclusive rights to export, and exclusive rights to import the copper sulphate, the saccharin, and paper, and the organization of commercial monopolies. Commission Greece sent a recommendation to the July 29, 1983 they were concerned the products subject to monopoly, ie salt, sulfur, oil, potassium sulphate, matches and playing cards. In order to achieve suppression of exclusive importing products from other Member States will not provide for any items after a quantity restriction December 31, 1985, thereby opening an annual quota. The Commission has abolished certain exclusive rights to import and market but has asked the Court of Justice in June 1988 for insufficient organization of petroleum monopoly. (Druesne, Kremlis 1990, p 120)

3.7 Spain

Article 48 of the Treaty of Accession provides that the abolition of exclusive rights to export as of January 1, 1986, and requires the organization of monopolies, such as free movement of goods concerned to be provided by December 31, 1991. The Commission found in July 1988 that the measures taken by the Spanish Government monopoly of petroleum products was satisfactory. Instead, it started infringement procedure regarding the monopoly of the tobacco industry. (Druesne, Kremlis 1990, p 120)

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

14. CONCLUSIONS

Public enterprises and trade monopolies should not have preferential treatment in competition.

At the same time, to consider the fact that they serve the public interest.

State measures taken in this area should be adequate to achieve the objectives.

The challenges faced by public enterprises in the form of competition policy and neoliberal reforms are being resisted or controlled partially, and this can be witnessed in the renewed efforts to redefine public enterprises in an integrated European Union.

In the same time, European Union policy towards public service continues to be very much oriented towards the implementation of competition policy.

REFERENCES

Druesne, G. (1991). *Droit Materiel et politiques de la Commmunaute europeene,* Paris: Presses Universitaires du France..

Druesne, G. Kremlis G. (1990). *La politique de concurrence de la Communaute Economique Europeene*, Paris: Presses Universitaires du France..

Favret, J.M. (2001). *Droit communautaire du marche interieur,* Paris: Gualino..

Manolache, O. (2003). *Drept comunitar*, București: All.

Mathijsen, P. (2002). *Compendiu de drept European,* București: Club Europa.

Moussis, N. (2001). *Guide des politiques de l'Europe,* Paris: Pedone.